

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7 BRECK SMITH,)
8 Petitioner,) 2:10-CV-01596-PMP-PAL
9 vs.)
10 D.W. NEVEN, *et al.*,) ORDER
11 Respondents.)

This is an action initiated by Breck Smith, a state prisoner, on a petition for writ of habeas corpus (ECF No. 10). Petitioner has filed an amended petition (ECF No. 19) and was granted leave to consolidate another habeas petition with this one, filing a supplemental petition (ECF No. 26). Respondents filed an answer (ECF No. 28) and petitioner a reply (ECF No. 34). However, prior to a decision being reached on the merits of the claims, petitioner filed a motion to dismiss the petition without prejudice (ECF No. 38), which respondents have not opposed. Petitioner indicates a desire to pursue his claims in state court and declares his understanding of the consequences of his motion. Good cause appearing, the motion (ECF No. 36) is **GRANTED**. The petition and this action will be **dismissed without prejudice**. Given that this is a voluntary dismissal, the Court finds that jurists of reason would not find the granting of the motion to be debatable. Therefore, no certificate of appealability shall issue. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

24 || Dated this 23rd day of October, 2013.

Philip M. Orr
UNITED STATES DISTRICT JUDGE